# Yon Heng Farm Sdn Bhd & Ors v Ai Hwa Poultry Farm Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-02(NCvC)(W)-159–01 OF 2018
HAMID SULTAN, ABANG ISKANDAR AND RHODZARIAH BUJANG JJCA
2 OCTOBER 2018

*Contract — Lease — Renewal — Enforceability of lease agreement — Parties entered into lease agreement — Parties renewed lease agreement — Whether the fact that only one director of first appellant signed lease agreement rendered lease agreement unenforceable — Whether Turquand rule applicable — Whether appellants entitled to raise issue of illegality*

The appellants and the respondent were in the business of pig rearing. Vide an agreement dated 1 March 2004 ('the first lease agreement'), the first appellant agreed to lease to the respondent the first appellant's lands ('the said lands') together with all the pig farming facilities and building for a period of five years. Upon its expiry, the first lease agreement was extended for another five years ('the second lease agreement'). Clause 5(b) of the second lease agreement provided an option to renew the lease period for another five years. The respondent contended that it had exercised the said option by orally informing the directors of the first appellant. The third lease agreement was signed by the respondent's director ('PW1') and the first appellant's director, Tong Yong Lai. Problem arose when the appellants decided not to proceed with the third lease agreement. Consequently, the respondent brought an action for specific performance of the third lease agreement and execution of the same by the second and third appellants as the directors of the first appellant. The first appellant then counterclaimed for vacant possession of the said lands. The learned judicial commissioner allowed the respondent's claim and dismissed the first appellant's counter claim, hence this appeal. The appellants raised the issue of whether the fact that only PW1 and Tong Yon Lai had signed on the third lease agreement and not the second and third appellants, would render it unenforceable. Further, the appellants submitted that the *Turquand* rule or indoor management rule was not relevant in the present case because the issue here was the incomplete agreement as it was signed by only by Tong Yon Lai. The appellants also submitted that the third lease agreement was illegal because the separate payment of RM16,000 outside of the rental stipulated in the third lease agreement was in fact tax evasion.

**Held**, affirming the decision of the judicial commissioner on both the claim and counterclaim; and dismissing the appeal with costs:

(1) The conduct that was relevant here and which worked against the appellants was their previous dealings with the respondent which was evidenced by the first lease agreement. Just like the third lease agreement, the first lease agreement was only signed by Tong Yon Lai, yet parties had no issue with that omission. Then there was other conduct of the first appellant in accepting the respondent's payments by cheques of the rentals for March 2014–December 2015 which was for the first year of the third lease agreement. Further, the third lease agreement was prepared by the appellants' solicitors on the instruction of Tong Yon Lai. This conduct ought to be held against the appellants for they could not be allowed to turn back on an agreement which was prepared at their own behest. Lastly, from March 2014–March 2015, the appellants did not issue any notice to terminate the lease or communicate their intention not to renew the lease (see paras 12–13).

(2) The *Turquand* rule had no application to the facts of the present case because the enforceability of the third lease agreement by an order of specific performance hinged on whether the omission of the other two signatories to sign on it rendered it invalid or unenforceable (see para 15).

(3) The appellants should not be allowed to raise the issue of illegality to defeat the respondent's claim because the so-called tax evasion was of their own doing and not that of the respondent's. In other words, they should not be allowed to benefit from their own wrong. In any event, the rental as stated in the third lease agreement was very clear, it was RM26,000. Therefore, there was nothing illegal on the face of that agreement which, otherwise would render it unenforceable (see paras 17–18).

**[Bahasa Malaysia summary**

Perayu-perayu dan responden menjalankana ternakan babi. Melalui perjanjian bertarikh 1 Mac 2004 ('perjanjian pajakan pertama'), perayu pertama telah bersetuju untuk memajak tanah-tanah perayu pertama ('tanah tersebut') kepada responden bersama semua kemudahan ternakan babi dan bangunan tersebut selama tempoh lima tahun. Selepas ia luput, perjanjian pajakan pertama telah dilanjutkan untuk lima tahun lagi ('perjajian pajakan kedua'). Klausa 5(b) perjanjian pajakan kedua memperuntukkan pilihan untuk memperbaharui tempoh pajakan untuk lima tahun lagi. Responden menegaskan bahawa ia telah menggunakan pilihan tersebut dengan secara lisan memberitahu pengarah-pengarah perayu pertama. Perjanjian pajakan ketiga telah ditandatangani oleh pengarah responden ('PW1') dan pengarah perayu pertama, Tong Yong Lai. Masalah timbul apabila perayu-perayu memutuskan untuk tidak meneruskan dengan perjanjian pajakan ketiga. Akibatnya, responden telah memulakan tindakan untuk pelaksanaan spesifik perjanjian pajakan ketiga dan pelaksanaan sama oleh perayu-perayu kedua dan ketiga sebagai pengarah-pengarah kepada perayu pertama. Perayu pertama kemudian

telah menuntut balas untuk milikan kosong tanah tersebut. Pesuruhjaya kehakiman yang bijaksana telah membenarkan tuntutan responden dan menolak tuntutan balas perayu pertama, justeru rayuan ini. Perayu-perayu menimbulkan isu sama ada hakikat bahawa hanya PW1 dan Tong Yong Lai telah menandatangani perjanjian pajakan ketiga dan bukan perayu-perayu kedua dan ketiga, akan menjadikannya tidak boleh dikuatkuasakan. Selanjutnya, perayu-perayu berhujah bahawa *Turquand* Rule atau rukun pengurusan dalaman adalah tidak relevan dalam kes ini kerana isu di sini adalah perjanjian yang tidak lengkap kerana ia ditandatangani oleh Tong Yong Lai sahaja. Perayu-perayu juga berhujah bahawa perjanjian pajakan ketiga adalah menyalahi undang-undang kerana bayaran berasingan RM16,000 di luar sewaan yang dinyatakan dalam perjanjian pajakan ketiga pada hakikatnya adalah untuk mengelakkan cukai.

**Diputuskan**, mengesahkan keputusan pesuruhjaya kehakiman untuk kedua-dua tuntutan dan tuntutan balas; dan menolak rayuan dengan kos:

(1) Perbuatan yang relevan di sini dan yang mana adalah terhadap perayu-perayu adalah urusan terdahulu mereka dengan responden yang dibuktikan melalui perjanjian pajakan pertama. Sepertimana perjanjian pajakan ketiga, perjanjian pajakan pertama telah ditandatangani oleh Tong Yon Lai sahaja, malah pihak-pihak tidak mempunyai isu tentang peninggalan tersebut. Kemudian terdapat perbuatan lain oleh perayu pertama yang menerima bayaran-bayaran responden melalui cek-cek sewaan untuk Mac 2014 hingga Disember 2015 iaitu untuk tahun pertama perjanjian pajakan kektiga. Selanjutnya, perjanjian pajakan ketiga telah disediakan oleh peguamcara perayu-perayu atas arahan Tong Yon Lai. Perbuatan ini patut dipegang terhadap perayu-perayu kerana mereka tidak boleh dibenarkan berbalik kepada perjanjian yang telah disediakan atas arahan mereka sendiri. Akhirnya, dari Mac 2014 hingga Mac 2015, perayu tidak mengeluarkan apa-apa notis untuk menamatkan pajakan itu atau memberitahu tentang niat mereka untuk tidak memperbaharui pajakan itu (lihat perenggan (lihat perenggan 12–13).

(2) Rukun dalam kes *Turquand* tidak terpakai kepada fakta kes ini kerana penguatkuasaan perjanjian pajakan ketiga melalui perintah pelaksaan spesifik bergantung kepada sama ada peninggalan dua orang penandatangan lain itu menjadikannya tidak sah atau tidak boleh dikuatkuasakan (lihat perenggan 15).

(3) Perayu-perayu tidak patut dibenarkan menimbulkan isu penyalahan undang-undang untuk menggagalkan tuntutan responden kerana pengelakan cukai yang dikatakan itu adalah perbuatan mereka sendiri dan bukan responden. Dalam erti kata lain, mereka tidak patut dibenarkan mendapat keuntungan daripada perbuatan salah mereka. Dalam apa keadaan, sewaan sepertimana dinyatakan dalam perjanjian

pajakan ketiga adalah jelas, ia adalah RM26,000. Oleh demikian, tiada apa-apa yang menyalahi undang-undang pada perjanjian itu yang mana, sebaliknya akan menjadikannya tidak boleh dikuatkuasakan (lihat perenggan 17–18).]

**Notes**

For a case on renewal, see 3(4) *Mallal's Digest* (5th Ed, 2018 Reissue) para 6343.

**Cases referred to**

*Ayer Hitam Tin Dredging Malaysia Bhd v YC Chin Enterprises Sdn Bhd* [1994] 2 MLJ 754, SC (refd)
*Charles Grenier Sdn Bhd v Lau Wing Hong* [1996] 3 MLJ 327, FC (refd)
*Ho Kam Phaw v Fan Sin Nin* [1998] 2 MLJ 713, CA (refd)
*Lim Kar Bee v Duofortis Properties (M) Sdn Bhd* [1992] 2 MLJ 281, SC (distd)
*Lin Nyuk Chan v Wong Sz Tsin* [1964] 1 MLJ 200, FC (refd)
*Masters v Cameron* (1954) 91 CLR 353, HC (refd)
*Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors* [1998] 1 MLJ 465, FC (refd)
*Royal British Bank v Turquand* [1843–60] All ER Rep 435 (refd)
*Tan Sri Abdul Khalid bin Ibrahim v Bank Islam Malaysia Bhd & another suit* [2009] 6 MLJ 416, HC (refd)

**Legislation referred to**

Contracts Act 1950 s 24

**Appeal from**: Civil Suit No JA-22NCVC-88–04 of 2016 (High Court, Johor Bahru)

*Tee Yee Koon (Goh Tiong with him) (SK Song) for the appellants.*
*G Ravi (Lau Kok Guan with him) (Lau Kok Guan, Liana & Kuan) for the respondent.*

**Rhodzariah Bujang JCA:**

**[1]** The appellants in this appeal who were the defendants in the court below, were in the business of pig rearing. The first appellant was a company incorporated for that purpose whereas the second and third appellants are siblings and were directors of the company. The second appellant was also the licence holder for pig farming under a regulation enacted for that purpose in Johor, that is Kaedah-Kaedah (Melesen) Babi 1977. The first appellant was the registered owner of three parcels of land situated at Mukim Plentong, Johor Bahru and the legal dispute between them and the respondent, who was in the same business was over an agreement first entered into between the first appellant and the respondent ('the plaintiff') way back on 1 March 2004. In

A the said agreement the first appellant agreed to lease to the respondent the said lands together with all the pig farming facilities and building as described in the Schedule to the agreements for a period of five years, that is until 28 February 2009 ('the first lease agreement'). Upon its expiry, that first lease agreement was extended for yet another five years, commencing from 1 March B 2009–28 February 2014 ('the second lease agreement'). Clause 5(b) of the second lease agreement provides an option to renew the lease period for another five years. The said clause reads:

> Upon the expiration of the term hereby created and subject to the Lessee not having C committed any breach of any term of this Agreement, the Lessor shall at the request of the Lessee make at least one (1) month before the termination of the term hereby created grant to the Lessee a further lease of the Demised Lands for a total period of five (5) years subject to the maximum increment of 30% on the monthly rent before the expiry of the prevailing lease.

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According to the respondent, it had exercised that option in January 2014 by orally informing the directors of the first appellant and it has also agreed to the first appellant's proposal for an additional rental of RM16,000 per month on top of the existing RM26,000 per month as stipulated in second lease E agreement. That RM16,000 was according to the respondent requested by the appellants as under table money for tax evasion. Unlike the previous two written agreements, initially no like written agreement was prepared for this third extension. However, at the insistence of the respondent, a formal agreement was subsequently prepared which stipulates the leasing period to be F six years as follows:

> The Lessor hereby lets and the Lessee hereby takes the Demised Lands together with the Pig Farming Facilities for a total aggregate period of six (6) years commencing from the first April 2015 and terminating on 31st March 2021 under the following period of leases:
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> (a) Lease of three (3) years with effect from 01/04/2015 to 31/03/2018 at the monthly rent of RM26,000.00 and subject to Clause 5(a) hereof further;
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> (b) Lease of three (3) years with effect from 01/04/2018 to 31/03/2021 at the monthly rent of RM26,000.00.

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**[2]** The named signatories to this third lease agreement (exh P4) for the first appellant as stated at p 7 thereof are the second appellant, the third appellant and another brother of theirs, Tong Yon Lai (sued as the third defendant in the High Court). However only Tong Yon Lai and Yeo Kiah Yoo (the respondent's I director) signed on the agreement. The second and third appellants refused to do so. Nonetheless, the respondent contended that they have issued cheques for the monthly rental as agreed through their solicitor, for the months of March 2014–March 2016. Then on 2 March 2016 the respondent was informed by the appellant's solicitor, Messrs TS Chong & Co that the

appellants have resolved in a board meeting not to proceed with the third lease agreement. Thus, vide a writ and statement of claim, the respondent filed an action in the Johor Bahru High Court for, inter alia, specific performance of the third lease agreement and execution of the same by the second and third appellants. In their defence, the appellants contended that upon the expiry of the second lease agreement, the tenancy was automatically converted to a monthly one and failing a consensus by the respondent on the increased rental of RM45,000 and the respondent's refusal to yield vacant possession, notice to quit and termination of the lease dated 4 March 2016 was issued to the respondent. The first appellant then counterclaimed for vacant possession of the said lands. Before going further, it needs to be mentioned that the claim against Tong Yon Lai was subsequently withdrawn by the respondent. Hence he was not a party in this appeal which was against the decision of the learned judicial commissioner who after a full trial of the action granted the reliefs prayed for by the respondent in its statement of claim.

JUDGMENT OF THE HIGH COURT

**[3]** After a full trial of the action the learned judicial commissioner allowed the respondent's claim and dismissed the counter claim of the first appellant. Basically, His Lordship's reason for doing so was because he found that the respondent had validly exercised the option under the said cl 5(b) of the second lease agreement which has been orally agreed to by the appellants (as pleaded in para 20 of the statement of claim) and evidence on this was led without objection by the appellants at the trial. Tong Yon Lai in question and answer 6 of his witness statement also confirmed that they, that is himself, the second and third appellants were informed orally by the respondent's director (PW1 — Mr Yeo Kiah Yoo) of the intention to renew the lease pursuant to the said cl 5(b). The second appellant in his evidence also agreed that PW1 had orally informed him about the renewal of the lease and PW1 in his testimony had in fact testified to this effect. However, because of the increment to the rental as requested by Tong Yon Lai and the appellants exceeded 30% as stipulated in cl 5(b), the respondent asked that the lease be renewed for six years and this according to PW1, Tong Yon Lai and Mr Thung Yun Heng (another director of the first appellant) had agreed to.

**[4]** The delay in the preparation of the third lease agreement after the exercise of the option was also explained — it was because of Chinese New Year and the demise of Tong Yon Lai's mother on 21 February 2014 and that of his brother on 8 May 2015. The extended period of six years for the lease was agreed upon because of the increased rental and was binding on the parties, as found by the learned judicial commissioner. The learned judicial commissioner also emphasised the fact that the preparation of the draft for third lease agreement was at the behest of Tong Yon Lai.

**[5]** As for the issue raised by the appellants that the third lease agreement was not capable of enforcement because only the respondent and Tong Yon Lai had signed on it, His Lordship noted that the first lease agreement was similarly signed by these two persons. However, in the alternative His Lordship said even if he was wrong on the authority of Tong Yon Lai to execute the third lease agreement, the *Turquand* rule in company law applied, in that the respondent was entitled to assume that the internal management of the first appellant was in order because Tong Yon Lai was the person who was in control of the first appellant's business in all the years of their business dealings. This includes arranging for a lawyer to prepare the lease agreements.

**[6]** His Lordship also found that the appellants' own conduct in allowing the respondent to remain in possession and occupation of the land during the interim period after the expiry of the second lease and the execution by Tong Yon Lai of the third lease agreement must be held against them as this possession constitutes part performance of the agreement. Based on the Federal Court's case of *Lin Nyuk Chan v Wong Sz Tsin* [1964] 1 MLJ 200, His Lordship held that where there was part performance arising from being in possession of the land, a court of equity will usually grant specific performance.

**[7]** Lastly on the contention of the appellants that the third lease agreement was illegal because the separate payment of RM16,000 outside of the rental stipulated in the third lease agreement was in fact tax evasion, His Lordship said this was proposed by the appellants themselves and based on *Tan Sri Abdul Khalid bin Ibrahim v Bank Islam Malaysia Bhd & another suit* [2009] 6 MLJ 416 they should be estopped from raising the issue of illegality.

THE APPEAL

**[8]** Before us learned counsel for the appellants raised a number of issues against the decision and findings of the learned judicial commissioner. The first is that His Lordship erred when he ordered specific performance of the third lease agreement after finding that it was renewed orally. He submitted that there are 'huge and material differences between seeking specific performance of the oral lease based as the renewal terms and specific performance of the written draft lease based on the incomplete lease agreement'.

**[9]** With respect, the point as submitted above is not quite right. What the learned judicial commissioner decided was that the option to renew under cl 5(b) was exercised orally and agreed to orally by the appellants. In other words there was an oral agreement to extend the lease for another term — not that the new lease agreement was an oral one. Evidence of such oral agreement to extend the lease had been alluded to by the learned judicial commissioner in his judgment which we have mentioned earlier. The more pertinent issue, to

our mind is whether the fact that only PW1 and Tong Yon Lai had signed on the third lease agreement and not the second and third appellants, would render it unenforceable.

**[10]** The appellants' counsel has referred us to this court's decision in *Ho Kam Phaw v Fan Sin Nin* [1998] 2 MLJ 713 where it was held that where parties have agreed to resolve their differences by a formal agreement in writing to be drafted by a person named Max and approved by their respective solicitors, nothing short of signing the document by both parties could bring a contract into existence.

**[11]** The respondent's counsel contrary argument was based on, inter alia, the Supreme Court decision in *Ayer Hitam Tin Dredging Malaysia Bhd v YC Chin Enterprises Sdn Bhd* [1994] 2 MLJ 754 which held as follows:

> (1) The *existence of an agreement depends upon the intention of the parties*, who must be ad idem. *It may be inferred from the language used, the parties' conduct having regard to the surrounding circumstances and the object of the contract.* The court will generally apply an objective or reasonable man test.
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> (2) *Merely because the parties contemplate the preparation of a formal contract, that would not prevent a binding contract from coming into existence before the formal contract is signed.* (Emphasis added.)

**[12]** Now the conduct that is relevant here and which worked against the appellants was their previous dealings with the respondent which was evidenced by the first lease agreement (exh P3 at pp 303–311 of AR Vol 3 Part C). It bears repetition that exactly like the third lease agreement (exh P4 at pp 312–319 of Vol 3 Part C) the signatories to it, for the first appellant, were also the first and second appellants as well as the Tong Yon Lai and just like the third lease agreement, only Tong Yon Lai signed on that first lease agreement. Yet parties had no issue with that omission and this was evidenced by the undisputed fact that first lease agreement was extended vide the second lease agreement. Admittedly, the second lease agreement also had the same signatories and this time all three of them signed on the said agreement. However this does not detract from the fact that in that previous dealing between the parties they have agreed to be bound by an agreement which were not executed by all the signatories named therein.

**[13]** Then there is the other conduct of the first appellant in accepting the respondent's payments by cheques of the rentals for March 2014–December 2015 which was for the first year of the third lease agreement. Learned counsel for the appellants highlighted to us that what was paid was not the new rental of RM42,000 (RM26,000 + RM16,000) but the old rental of RM26,000 only. Regardless of that, the fact is the payments were accepted when made in

December 2015, as well as in January–February 2016 (see exhs P6–P8) and these payments were only returned by the appellants to the respondent in March 2016 (exh D19). Additionally, as mentioned earlier, it is also an undisputed evidence that the third lease agreement was prepared by the appellant's solicitors upon Tong Yon Lai's instruction and who was undisputedly the person in authority who had been dealing with the respondent right from the start. Again this is conduct which must be held against the appellants for they cannot be allowed to turn back on an agreement which was prepared at their own behest. Also as was rightly pointed out by the learned judicial commissioner in his judgment, from March 2014–March 2015, the appellants did not issue any notice to terminate the lease or communicate their intention not to renew the lease. Relevant to this issue the learned judicial commissioner has cited the Federal Court's decision in *Charles Grenier Sdn Bhd v Lau Wing Hong* [1996] 3 MLJ 327 which in turn quoted with approval the Australian case of *Masters v Cameron* (1954) 91 CLR 353. It is a quotation we are equally moved to reproduce below:

> Where parties who have been in negotiation reach agreement upon terms of a contractual nature and also agree that the matter of their negotiation shall be dealt with by a formal contract, the case may belong to any of three classes. It may be one in which the parties have reached finality in arranging all the terms of their bargain and intend to be immediately bound to the performance of those terms, but at the same time propose to have the terms restated in a form which will be fuller or more precise but not different in effect. Or. Secondly, it may be a case in which the parties have *completely agreed upon all the terms of their bargain and intend no departure from or addition to that which their agreed terms express or imply, but nevertheless have made performance of one or more of the terms conditional upon the execution of a formal document*. Or, thirdly, the case may be one in which the intention of the parties is not to make a concluded bargain at all, unless and until they execute a formal contract.
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> *In each of the first two cases, there is a binding contract*: in the first case a contract binding the parties at once to perform the agreed terms whether the contemplated formal document comes into existence or not, and to join (if they have so agreed) in settling and executing the formal document; and in the second case a contact binding the parties to join in bringing the formal contract into existence and then to carry it into execution. (Emphasis added.)

## THE TURQUAND RULE

**[14]** On the application of the *Turquand* rule or indoor management rule learned counsel for the appellants submitted it was not relevant because the issue here is the incomplete agreement as it was signed by only Tong Yon Lai. Even if it was applicable, he said there was an exception to the rule as held in *Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors* [1998] 1 MLJ 465 in that it cannot be invoked by an outsider who knows or ought to know that there is an irregularity in the management of the company.

**[15]** We have to agree with learned counsel that the said rule has no application to the facts of this case for as rightly stated by him, the enforceability of the third lease agreement by an order of specific performance hinges on whether the omission of the other two signatories to sign on it renders it invalid or unenforceable. We have given our take on why we said that in spite of that omission, it was.

ILLEGAL AGREEMENT

**[16]** Lastly, on the illegality issue. Section 24 of the Contracts Act 1950 provides what is void contract. It is reproduced below without the illustrations:

> 24 What considerations and objects are lawful, and what not
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> The consideration or object of an agreement is lawful, unless —
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> (a) it is forbidden by a law;
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> (b) it is of such a nature that, if permitted, it would defeat any law;
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> (c) it is fraudulent;
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> (d) it involves or implies injury to the person or property of another; or
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> (e) the court regards it as immoral, or opposed to public policy.

In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

**[17]** As stated earlier, the appellants had requested that the additional rental of RM16,000 be paid but should not be reflected in the third lease agreement to avoid paying higher tax or in the words of their counsel 'to lower the tax liability'. On the strength of the Supreme Court's decision in *Lim Kar Bee v Duofortis Properties (M) Sdn Bhd* [1992] 2 MLJ 281 learned counsel for the appellants submitted that the third lease agreement cannot be enforced because it was tainted with illegality. We would respectfully disagree with him and instead, agree with learned counsel for the respondent that the appellants should not be allowed to raise this issue to defeat the respondents claim because the so called tax evasion was of their own doing — not that of the respondent's. In other words they should not be allowed to benefit from their own wrong and when we say this even though we agree with the statement in *Lim Kar Bee*'s case which says that:

> Courts have always set their face against illegality in any contract. It is very well settled that the courts take judicial notice of such illegality and refuse to enforce the contact, and such judicial notice may be taken at any stage, wither at the court of first instance or at the appellate stage irrespective of whether illegality is pleaded or not where the contract is ex facie illegal.

**[18]** Nevertheless, this cited case is clearly distinguishable on the facts because there the agreement for the sale and purchase of the land and the trust deed executed by the appellant were clearly for the benefit of a company which was formed pursuant to a scheme devised by a tax consultant to avoid payment of estate duty over the land. Now in this appeal before us, there was nothing illegal about the third lease agreement which was for a legitimate business purpose. The example given in *Tan Sri Abdul Khalid*'s case, is indeed an appropriate one to repeat here and that is:

> This is also akin to a case of a muslim who goes into a restaurant, had a meal, only to inquire after the meal if the food is non-halal and when told that is so, refused to pay for it. Such conduct cannot reflect a serious concern of the Shariah compliance, but *more of an attempt to renege contractual obligations which have been voluntarily agreed and acted upon by the other party*. (Emphasis added.)

In any event, the rental as stated in the third lease agreement is very clear — it is RM26,000. Therefore there is nothing illegal on the face of that agreement which, otherwise would render it unenforceable.

**[19]** For the reasons stated above we have decided to affirm the decision of the learned judicial commissioner on both the claim and the counterclaim. The appeal is therefore dismissed with cost to the respondent.

*Decision of learned judicial commissioner on both claim and counterclaim affirmed; appeal dismissed with costs.*

Reported by Dzulqarnain Ab Fatar